Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
FCC Seeks Comment Regarding Possible	)	CB Docket No. BO 16-251
Revision or Elimination of Rules Under The	)	
Regulatory Flexibility Act, 5 U.S.C. Section 610	)	

Comments of
Rural Telephone Service Company d/b/a Nex-Tech

I. INTRODUCTION AND SUMMARY

Rural Telephone Service Company d/b/a Nex-Tech (Nex-Tech) files these comments in response to the Public Notice issued in the above-captioned proceeding.[1]

Nex-Tech, with headquarters in Lenora, Kansas, is a rural local incumbent exchange carrier that has been providing service in northwest Kansas since 1951. On October 1, 2006, Nex-Tech acquired ten exchanges in Kansas from a non-rural carrier. At the time of the acquisition, over 99% of the housing and business units were unserved by broadband from the prior carrier. Many of the subscribers in the acquired exchanges lacked advanced telephone features, such as voice mail and conferencing, and were being served by lead cabling that disconnected calls during wet weather among other problems. Between October 2006 and December 2016, Nex-Tech invested nearly $60 million in fiber to the premises technology to enable improved telephone service and broadband capabilities for all ten acquired exchanges. This investment was primarily funded with a Rural Utility Service loan, scheduled to mature by 2020, requiring annual debt service payments of over $6.7 million. As a result of these improvements, broadband is available

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[1] *In the Matter of FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under The Regulatory Flexibility Act, 5 U.S.C. Section 610,* Public Notice, CB Docket No. BO 16-251 (DA 16-792, rel. Dec. 28, 2016) (*Public Notice*)

to 100% of the acquired exchanges and over 70% of the households and businesses have subscribed to broadband. Of the total broadband subscribers in these exchanges, 56% of them subscribe to broadband only.

Nex-Tech will limit its comments herein to the so-called "safety valve support" (SVS) mechanism, codified in 47 CFR § 54.305. The Public Notice lists Section 54.305 along with other rules in subpart D of part 54. In the context of the *Public Notice* and the requirements of the Regulatory Flexibility Act (RFA), Nex-Tech will argue below that this rule is no longer needed, is overly complex, presents a reporting burden for companies subject to the rule, and represents a barrier to reaching the Commission's goal of ubiquitous broadband deployment.

II. BACKGROUND

A. The Regulatory Flexibility Act

The RFA was enacted to assist agencies of the federal government determine the proper balance between the goals and benefits of regulations versus the costs placed on small businesses. Overall, the RFA requires a review of rules that "have, or might have, a significant economic impact on a substantial number of small entities." In the *Public Notice*, the Bureau notes the requirements for regulatory review contained in the RFA, including the following that will be the focus of Nex-Tech's comments:

- The continued need for the rule
- The complexity of the rule

B. The Safety Valve Support Rule

The Commission adopted the "parent trap" rule and related safety valve support (SVS) rule in 2005 to help guard against companies purchasing exchanges from unaffiliated companies in order to, in large part, increase universal service support. In essence, carriers purchasing exchanges from nonaffiliates are limited to the per-line universal service support received by the selling carrier. However, limited purchasing carriers in this regard could act to restrain investment in the purchased exchanges, which in many instances were severely underbuilt.

The SVS rule recognizes investment made by acquiring companies to enhance network infrastructure and provides for partial support recovery for that investment. SVS is a subcomponent of high cost loop support, with support payout estimated for 3Q2017 as follows[2]:

	Pre-Cap	Post-Cap	Post Budget Reduction
Monthly Support	$ 376,960	$ 376,960	$ 330,404
Quarterly Support	$ 1,130,880	$ 1,130,880	$ 991,211
Annualized Support	$ 4,523,520	$ 4,523,520	$ 3,964,843

The FCC's rules in Section 54.305 cover the circumstances under which SVS can be provided and include requirements regarding measuring the test year and providing data for subsequent years so that the SVS can be calculated. Then, up to 50% of the difference between the index year and subsequent years' HCLS is provided and referred to as SVS.[3] As an example of the SVS rules' complexity, Section 54.305(d)(1) contains the process for companies in Nex-Tech's situation for calculating SVS:

> For carriers that buy or acquire telephone exchanges on or after January 10, 2005, from an unaffiliated carrier, the index year expense adjustment for the acquiring carrier's first year of operation shall equal the selling carrier's loop-related expense adjustment for the transferred exchanges for the 12-month period prior to the transfer of the exchanges. At the acquiring carrier's option, the first year of operation for the transferred exchanges, for purposes of calculating safety valve support, shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. For the first year of operation, a loop cost expense adjustment, using the costs of the acquired exchanges submitted in accordance with §§54.1305 and 54.1306, shall be calculated pursuant to §54.1310 and then compared to the index year expense adjustment. Safety valve support for the first period of operation will then be calculated pursuant to paragraph (d)(3) of this section. The index year expense adjustment for years after the first year of operation shall be determined using cost data for the first year of operation of the transferred exchanges. Such cost data for the first year of operation shall be calculated in accordance with §§54.1305, 54.1306, and 54.1310. For each year, ending on the same calendar quarter as the first year of operation, a loop cost expense adjustment, using the loop costs of the acquired exchanges, shall be submitted and calculated pursuant to §§54.1305, 54.1306, and 54.1310 and will be compared to the index year expense adjustment. Safety valve support for the second year of operation and thereafter will then be calculated pursuant to paragraph (d)(3) of this section.

[2] USAC 3Q2017 filing with the FCC, Appendix HC07

[3] 47 CFR § 54.305(d)(3)

Clearly, this rule is complicated, subject to interpretation, and constitutes a burden on companies attempting to qualify for SVS.

III. NEX-TECH'S SAFETY VALVE CASE

A. The SVS Rule No Longer Serves a Legitimate Purpose

As stated above, Nex-Tech purchased exchanges in 2006 that were subject to the parent trap rule in Section 54.305, with index year and subsequent years' calculations being done per Section 54.305(d)(1). Since then, Nex-Tech, pursuant to the SVS rules, has had to maintain separate records for the acquired exchanges and has had to undergo the detailed calculations contained in the rules to obtain 50% of the HCLS it would have otherwise been entitled.

Nex-Tech, as stated above, has spent millions in upgrading the infrastructure in these exchanges so that the customers can enjoy quality high speed broadband internet access service. Clearly, the original purpose of the parent trap and SVS rules – to ensure acquiring companies did not unnecessarily and inappropriately inflate HCLS receipts – does not apply in Nex-Tech's case where investments have been made for nearly eleven years to improve the availability of broadband internet access services. Nex-Tech has proven it will invest in these communities, no matter what the cost recovery constraints might be.

Nex-Tech respectfully requests the section 54.305 limitations be eliminated to allow full cost recovery for current SVS recipients who have completed making investments to improve services in acquired exchanges.[4] This will continue to provide Nex-Tech with financial assistance necessary to meet debt service obligations and recover the investments made to provide improved telephone and broadband service to 100% of this service territory, an area that had little or no chance of ever seeing improved service from the previous carrier. It will also eliminate one set of overly complex, burdensome, unnecessary and conflicting rules that apply to small rural carriers simply because they chose to borrow money and make an investment in improving service in rural areas contiguous to existing exchanges, an action that the FCC is now specifically trying to promote with Connect America Fund Phase II.

[4] Nex-Tech estimates it has foregone nearly $20m in HCLS due to the operation of the SVS rules

In addition, Nex-Tech believes that the SVS rules are not in the public interest because the rules treat similarly situated rural customers (indeed customers served by the same carrier) in different ways. SVS allows one group to benefit fully from universal service funding while the other is eligible for at most 50% of that support, creating a permanent digital divide within study areas. SVS is a regulatory relic from a bygone era that requires elimination to meet the FCC's goals of ubiquitous broadband deployment.

B. The SVS Rules Are Overly Complicated

Nex-Tech has first-hand experience of how complex and open to interpretation the SVS rules are through interaction with USAC regarding the calculation of SVS. In late 2009, Nex-Tech began a several months' process with USAC to determine the proper calculation of its SVS. This process included a detailed letter drafted by Nex-Tech discussing, sentence-by-sentence, the operation of Sections 54.305(d), 54.305(d)(1), and 54.305(f) and Nex-Tech's interpretation thereof. After several months, USAC agreed with Nex-Tech's interpretation and adjusted the SVS accordingly. This anecdotal evidence demonstrates that the SVS rule is overly complicated and should not be subject to lengthy interpretation sessions with the FCC's designated expert, USAC.

IV. CONCLUSION

Nex-Tech recommends the FCC rescind the SVS rule as it relates to acquiring carriers who have completed investment in the acquired exchanges and have brought quality broadband internet access services to the customers. The rule is no longer necessary in these cases, and is overly complex and open to interpretation. Instead, Nex-Tech, and companies in similar circumstances, should be provided the full HCLS the companies are entitled to under the FCC's rules.

Respectfully Submitted,

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May 4, 2017